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Paper No. 6

BOULDER PATENT SERVICE INC  
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BOULDER, CO 80303-2924

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**NOV 28 2001**

In re Application of  
Brune et al.  
Application No. 09/854,036  
Filed: May 10, 2001  
Attorney Docket No. DCI-P017C

**OFFICE OF PETITIONS**

**ON PETITION**

This is a decision on the petition filed September 24, 2001, to accord the above-identified application a filing date of May 10, 2001, instead of May 14, 2001.

Paragraph (c) of 37 CFR 1.10 sets forth procedures for filing a petition for a filing date where there is a discrepancy between the filing date initially accorded by the Office and the "date-in" entered by the USPS. Paragraph (d) of 37 CFR 1.10 sets forth procedures for filing a petition for a filing date where the "date-in" is incorrectly entered or omitted by the USPS.

Petitioner has failed to provide evidence establishing the "date-in" entered by the USPS. Specifically, petitioner has failed to provide the PTO with a copy of the express mail label. Paragraph (b) of 37 CFR 1.10 provides,

Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked.

Since an express mail label has not been provided, petitioner has failed to establish the "date-in" entered by the USPS. Therefore, petitioner has failed to establish a discrepancy between the filing date accorded by the Office and the "date-in" entered by the USPS. In addition, petitioner has failed to establish that the "date-in" was incorrectly entered or omitted by the USPS.

Accordingly, the petition is **dismissed**.

The Office, on its own initiative and at its own discretion, has made a search of an USPS database. The search states the package was accepted by the USPS on May 11, 2001.

Petitioner has two choices. Petitioner may provide a showing in compliance with 37 CFR 1.10(c) or 37 CFR 1.10(d) establishing a filing date of May 10, 2001, or petitioner may request the date of May 11, 2001, based on the results of the Office's search of the USPS database.

Any request for reconsideration, or request for a filing date of May 11, 2001, must be submitted within **TWO (2) MONTHS** from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.10." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Further correspondence with respect to this matter should be addressed as follows:

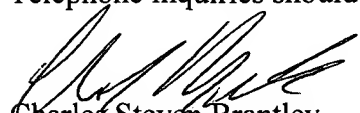
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If a request for reconsideration is not filed within two months, the file will be forwarded to Technology Center 2800 for examination in due course with a filing date of May 14, 2001.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



Charles Steven Brantley  
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for Patent Examination Policy